
From: McLaughlin, Christopher M. <cmmclaughlin@JonesDay.com>
Sent: Wednesday, March 16, 2022 3:51 PM
To: Unterreiner, Amanda; David R. Cohen (David@SpecialMaster.Law)
Cc: Morrison, Kristin S.M.; Alex Harris; Herman, Steven; External User - Jenn Hagedorn; External User - Matthew Ladd; Trevor Scheetz; Saltzburg, Lisa M.; Elsner, Mike; Fu, Abigail; Peter Bigelow; Crawford, Kyle
Subject: RE: Track 7 - Montgomery County Custodian Dispute
Attachments: 3-16-22 Letter to Special Master Cohen.pdf

Special Master Cohen,

Attached please find the Pharmacy Defendants' reply to Plaintiff's submission.

Chris

Christopher M. McLaughlin
Partner
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From: Unterreiner, Amanda <AUnterreiner@motleyrice.com>
Sent: Monday, March 14, 2022 5:27 PM
To: David R. Cohen (David@SpecialMaster.Law) <david@specialmaster.law>; McLaughlin, Christopher M. <cmmclaughlin@JonesDay.com>
Cc: Morrison, Kristin S.M. <kmorrison@jonesday.com>; Alex Harris <alex.harris@bartlitbeck.com>; Herman, Steven <SHerman@zuckerman.com>; External User - Jenn Hagedorn <jhagedorn@bowlesrice.com>; External User - Matthew Ladd <matthew.ladd@morganlewis.com>; External User - Trevor Sheetz <tscheetz@sperling-law.com>; Saltzburg, Lisa M. <lsaltzburg@motleyrice.com>; Elsner, Mike <melsner@motleyrice.com>; Fu, Abigail <afu@motleyrice.com>; Peter Bigelow <pbigelow@hilgersgraben.com>; Crawford, Kyle <KCrawford@zuckerman.com>
Subject: RE: Track 7 - Montgomery County Custodian Dispute

**** External mail ****

Special Master Cohen,

Please see attached correspondence and attachments from Lisa Saltzburg.

Thanks,

Amanda

Amanda Unterreiner | Paralegal | Motley Rice LLC
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From: David R. Cohen (David@SpecialMaster.Law) <david@specialmaster.law>
Sent: Thursday, March 10, 2022 4:56 PM
To: McLaughlin, Christopher M. <cmmclaughlin@JonesDay.com>
Cc: Morrison, Kristin S.M. <kmorrison@jonesday.com>; Alex Harris <alex.harris@bartlitbeck.com>; Herman, Steven <SHerman@zuckerman.com>; External User - Jenn Hagedorn <jhagedorn@bowlesrice.com>; External User - Matthew Ladd <matthew.ladd@morganlewis.com>; External User - Trevor Sheetz <tsheetz@spierling-law.com>; Saltzburg, Lisa M. <lsaltzburg@motleyrice.com>; Elsner, Mike <melsner@motleyrice.com>; Fu, Abigail <afu@motleyrice.com>; Unterreiner, Amanda <AUnterreiner@motleyrice.com>; Peter Bigelow <pbigelow@hilgersgraben.com>; Crawford, Kyle <KCrawford@zuckerman.com>
Subject: Re: Track 7 - Montgomery County Custodian Dispute

CAUTION:EXTERNAL

I would like a response on this from Ps by Monday COB latest. Thanks.
-d

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This email sent from:
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From: McLaughlin, Christopher M. <cmmclaughlin@JonesDay.com>
Sent: Thursday, March 10, 2022 4:44 PM
To: David R. Cohen (David@SpecialMaster.Law) <david@specialmaster.law>
Cc: Morrison, Kristin S.M. <kmorrison@jonesday.com>; Alex Harris <alex.harris@bartlitbeck.com>; Herman, Steven <SHerman@zuckerman.com>; External User - Jenn Hagedorn <jhagedorn@bowlesrice.com>; External User - Matthew Ladd <matthew.ladd@morganlewis.com>; External User - Trevor Sheetz <tsheetz@spierling-law.com>; Saltzburg, Lisa M. <lsaltzburg@motleyrice.com>; Elsner, Mike <melsner@motleyrice.com>; Fu, Abigail <afu@motleyrice.com>; Unterreiner, Amanda <AUnterreiner@motleyrice.com>; Peter Bigelow <pbigelow@hilgersgraben.com>; Crawford, Kyle <KCrawford@zuckerman.com>
Subject: Track 7 - Montgomery County Custodian Dispute

Special Master Cohen,

I write on behalf of the Pharmacy Defendants in Track 7 to bring an issue regarding Montgomery County's document custodians to your attention and seek your assistance in resolving this matter.

Counsel for the parties have exchanged correspondence on multiple occasions and engaged in two meet and confer calls regarding the county's document custodians. While the parties were able to reach agreement in other areas, we are at an impasse on four custodians—specifically, former Montgomery County Sheriff Phil Plummer and the three Sheriff's officers who served on DEA or HIDTA task forces. The Pharmacy Defendants requested the custodial files of those individuals, but the county refuses to produce them.

- **Sheriff Phil Plummer:** The county argues that it would be duplicative to add former Sheriff Plummer because the county listed its current Sheriff, Rob Streck, and current Chief Deputy, Daryl Wilson, as document custodians. But Sheriff Streck has only served in his current role since 2019. Sheriff Plummer served in that role for over a decade from 2008 through 2018, and he is a necessary custodian to cover the relevant time period. Significantly, in its response to Interrogatory No. 21, the county listed Sheriff Plummer as one of only two individuals not already included on its initial custodian list who have “knowledge of [the county’s] claims against the Pharmacy Defendants.” In addition, publicly available information shows that Sheriff Plummer was lauded for his work in the “fight against [the] opioid epidemic” and he is widely reported to have worked with legislators on solutions to the “opioid and heroin epidemic in Dayton.” (*E.g.*, <https://dayton247now.com/news/local/sheriff-phil-plummer-honored-for-work-in-fight-against-opioid-epidemic>; <https://www.portman.senate.gov/newsroom/press-releases/portman-and-turner-discuss-opioid-epidemic-dayton-community-leaders>). These are just a couple of examples demonstrating that Sheriff Plummer took an active role on this issue and, indeed, served as one of the county’s most important public spokespersons regarding the epidemic during his tenure. He is unique in this respect and it is nearly certain that not all of his relevant materials would be captured through other custodians.
- **TFOs:** For months, Montgomery County refused to identify whether any of its local law enforcement officers served as DEA or HITDA task force officers. In fact, the county did not identify those individuals until January 14 (one by name and two anonymously), after you ordered them to do so. As you likely recall, discovery from local TFOs was highly relevant in prior tracks. Cleveland, Summit County, and Lake County all produced custodial files of local TFOs. And working with the DEA, those officers often have unique insights into drug enforcement priorities in the relevant geographic area including the most problematic drugs and the sources of those drugs. The county raised the safety of these officers as a concern in refusing to produce their custodial files. The Pharmacy Defendants share the concern about protecting the identities of law enforcement officers involved in undercover and other sensitive operations. But there is no reason to believe that the Track 7 parties cannot work cooperatively to protect the identities of such individuals when necessary, as was done in prior tracks.

In our view, these requests should hardly be viewed as controversial, but we are at an impasse after months of meeting and conferring with Plaintiff. There is ample reason for Montgomery County to produce the custodial files of these individuals, and we respectfully request that you order them to do so.

Regards,

Chris

Christopher M. McLaughlin

Partner

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